Trust Company -v- Comptroller of Taxes
Failure to comply with Regulation 8(2) Penalty
December 2021

For the purpose of anonymisation, the true name of any individual or company mentioned below has been fictionalised.

OPENING COMMENTS

1. In reaching this determination the Commissioners have been assisted by the papers and submissions filed by the parties.

BACKGROUND

2. The Appeal is against a notice of penalty issued under Regulation 10 of the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 (the "Regulations") by the Respondent on 21 December 2018 to the Appellant for a failure to comply with Regulation 8(2) of the Regulations in respect of a return for 2017 (the relevant year) required under Regulation 5 of the Regulations due on or before 30 June 2018 (the reporting date) and submitted late on 4 July 2018.

ISSUES FOR THE COMMISSIONERS

3. The Commissioners sat to consider these matters on 13 December 2021. The issue for determination by the Commissioners was whether the report submitted by the Appellant under Regulation 5 comprised one return for 456 trusts and, therefore, was subject to one penalty of £300 under Regulation 10 or comprised a consolidated report of 456 returns for 456 trusts and, therefore, was subject to 456 penalties of £300 each for 456 trusts.

BACKGROUND

4. Regulation 5 states:

> **8 Content and timing of returns**
>
> (1) A reporting financial institution must, in respect of the relevant year and every following calendar year, prepare a return, in such form and manner as the Comptroller shall determine, setting out the information specified in Section I of the CRS in relation to each reportable account that is maintained by the institution at any time during the calendar year in question.
>
> (2) A reporting financial institution must send a return under this Regulation to the Comptroller on or before 30th June in the year following the calendar year to which the return relates (the date for return under this paragraph being "the reporting date").

5. The penalty notice states:

> In accordance with Regulation 10, each Reporting Financial Institution whose details are included within the file is therefore liable to a £300 penalty for failure to comply with the Regulations. The file submitted

under lodgement reference XX0XX00XXX contained reports for 456 Reporting FIs, giving a total penalty of £136,800.00.

6. The Appellant contends that one return for 456 trusts was submitted within the file submitted and therefore one penalty of £300 arises because the trusts were trustee documented trusts and not reporting financial institutions.

7. Regulation 10 states:

> **10 Penalty for failure to comply with Regulations**
>
> A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

8. It should be noted that the Respondent was initially of the view that once the reporting date had passed and the Appellant had failed to submit a file, the trusts reported on within the file lost their trustee documented trust status and reverted to being reporting financial institutions for the purposes of the Regulations, as stated in the Respondent's letter to the Appellant dated 5 November 2019. The Respondent subsequently resided from this view in their letter to the Appellant dated 19 May 2021.

9. The Common Reporting Standard ("CRS") requires that participating jurisdictions undertake the automatic exchange of information ("AEOI") between themselves. The Regulations introduce the CRS into Jersey's domestic legislation and

> **Regulation 1**
>
> (5) In these Regulations, a word or expression which is defined in the CRS has that meaning except to the extent that a reporting financial institution may use as an alternative a definition in any other international governmental agreement if –
>
> (a) Jersey and a participating jurisdiction is, or has been, a party to that other agreement; and
>
> (b) that other agreement provides for the automatic exchange of tax information,
> in so far as such use would not frustrate the purposes of the Agreement.

10. The exceptions are not relevant to this Appeal.

11. In the CRS a trust is a legal arrangement and is defined to be an 'entity'. A trust is not a legal person and a company is a legal person, but for the purposes of the CRS both a trust and a company are entities. Nevertheless, there remain crucial differences between a trust and a company. The fiduciary duties of a trustee are to the beneficiaries of the trust; the fiduciary duties of a director are to the company.

12. The trustee is an integral part of the trust's 'legal arrangement' along with its beneficiaries, trust assets and trust deed. A trust is a nexus of obligations and the CRS trustee documented trust 'regime' creates a further obligation for the trustee viz the trust: to assume the trust's otherwise reporting financial institution obligations to the extent that the trust is no longer considered to be a reporting financial institution and instead is considered a non-reporting financial institution. There appears no room for equivocation at this point. For the CRS, the

trustees, the settlor, the protector and the beneficiaries are considered controlling persons and therefore are reportable under the CRS by the trustee as the reporting financial institution for the trust, which would out with the trustee documented trust regime be reported by the trust. It may appear that without the CRS, the distinction between the trustee (RFI) of Trust A (NRFI) and the trustee (FI) of Trust A (RFI) is a distinction without a difference and without the CRS it effectively would be but within the world of the CRS it is a distinction with a difference, the difference being (1) that the reportable accounts of Trust A (now a NRFI) become the reportable accounts of the trustee (RFI) and (2) the trustee becomes personally liable for Regulation 10, 11 and 12 penalties. Between contradictories there is no intermediary, and the reportable accounts in the return are either the trust RFI's or the trustee RFI's, they cannot be maintained for the purposes of the CRS at one and the same time by both the trust RFI and the trustee RFI which the Respondent's position would entail.

13. There does appear to be an aporia in the CRS and Regulations viz at what point do the transferred obligations revert to the trust? The Respondent initially took the view that this point was when the reporting date had passed, and the Appellant had failed to submit a return. This appears quite logical in the absence of an explicitly stated test in either the CRS or the Regulations. The Commission has no view on this matter and no arguments have been put forth by either the Respondent or Appellant as to (1) when or the time limit by which a reversion would occur, (2) what events would trigger such a reversion and (3) whether the reversion would be permanent or only in respect of one reporting period.

14. The CRS defines entities which qualify as investment entities, investment entities which qualify as financial institutions ("FI") and FIs which qualify as reporting financial institutions ("RFI"). The 456 trusts which are the subject of the Appeal would qualify as RFIs under these definitions except for the CRS definition of non-reporting financial institutions ("NRFI") which includes trustee documented trusts ("TDT"):

    VIII B 1. The term "Non-Reporting Financial Institution" means any Financial Institution that is:

    (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

15. An RFI is defined negatively in the CRS as

    VIII A Reporting Financial Institution

    1 The term "Reporting Financial Institution" means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.

16. The 456 trusts are agreed by the Respondent and the Appellant as being TDTs and the Appellant as being their corporate trustee and therefore their reporting financial institution.

17. The CRS and Regulation 9 provide for the use of service providers:

    9 Use of service providers

    As referred to in Section II(D) of the CRS, a reporting financial institution may use a service provider to undertake the due diligence requirements under Regulations 5 and 6 and the reporting obligations

under Regulation 8 but in such cases those obligations continue to be the obligations of the reporting financial institution.

THE ARGUMENTS

The 'service provider' argument

18. The Respondent refers to paragraphs 55 and 56 of the CRS Commentary:

> *Subparagraph B(1)(e) – Trustee-Documented Trust*
>
> 55. A trust that is a Financial Institution (e.g. because it is an Investment Entity) is a Non-Reporting Financial Institution, according to subparagraph B(1)(e), to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
>
> 56. This category of Non-Reporting Financial Institution reaches a similar result as that under paragraph D of Section II, according to which Reporting Financial Institutions may be allowed to rely on service providers to fulfil their reporting and due diligence obligations. **The only difference between that paragraph and this category is that the reporting and due diligence obligations fulfilled by service providers remain the responsibility of the Reporting Financial Institution, while the responsibility of those fulfilled by the trustee of a Trustee-Documented Trust is transferred by the trust to its trustee. This category does not modify, however, the time and manner of the reporting and due diligence obligations which remain the same as if they still were the responsibility of the trust.** For example, the trustee must not report the information with respect to a Reportable Account of the Trustee-Documented Trust as if it were a Reportable Account of the trustee. **The trustee must report such information as the Trustee-Documented Trust would have reported (e.g. to the same jurisdiction) and identify the Trustee-Documented Trust with respect to which it fulfils the reporting and due diligence obligations.** This category of Non-Reporting Financial Institution may also apply to a legal arrangement that is equivalent or similar to a trust, such as a *fideicomiso*. [Respondent's emphases]

19. The Respondent maintains that the emphasised sentences entail that the file submitted by the corporate trustee for a number of TDTs is a consolidated report of a number of individual returns, there being one return for each trust.

20. There are no definitions in the CRS or the Regulations for the terms return, file, report or consolidated report. The Appellant and the Respondent agree that the term consolidated return has no meaning in the context of the Regulations and the CRS.

21. On the Jersey AEOI portal, a 'third party service provider' registers under 'Category of FI reporting under CRS' as 'Submitting reports on behalf of another entity/entities' which is noted as being for submitting reports as a third-party service provider. The corporate trustee of a TDT on the other hand registers as an 'Investment Entity' which is clear from the references to the 50% gross income test. Furthermore, the legal status of the FI can be set as company, trust, foundation, partnership or other.

22. For a trust to submit a return on the portal, the trust itself would need to register as an Investment Entity / Trust.

23. The different types of registration and their submissions can be summarised by the following table:

RFI	Category of RFI	Legal status	Submission
Third party SP	Submitting reports on behalf of another entity / entities	Company	Consolidated report of other entities' returns
Trustee of TDT	Investment Entity	Company	Return (A) of the TDTs transferred reportable accounts
Trust	Investment Entity	Trust	Return (B) of the trust's reportable accounts

24. The meaning of paragraph 56 is that return (A) must include for each of the TDTs being reported on by the corporate trustee the information required for return (B) i.e. "….the due diligence and reporting obligations fulfilled by the trustee of a Trustee-Documented Trust is transferred by the trust to its trustee. This category does not modify, however, the time and manner of the reporting and due diligence obligations which remain the same as if they still were the responsibility of the trust." "…as if they still were the responsibility of the trust…" cannot be read as "…are the responsibility of the trust", which appears to be the position taken by the Respondent. If it isn't then the Respondent has failed to convince the Commission otherwise.

25. However, a Return (B) must not include the reportable accounts of the corporate trustee acting in the capacity of any other category of FI (e.g. as the custodian of a CIF) or of the corporate trustee itself i.e. its debt and equity interests.

26. Compliance Note 1 (CN1) issued on 5 April 2019 is submitted by the Respondent as evidence of its position:

> **Compliance Note 1 (CN1): CRS reporting by third party service providers**
>
> Revenue Jersey has identified that some third-party reporters, including trust and company service providers (TCSPs), have incorrectly reported that individuals and/or entities hold accounts directly in that third party.
>
> Where the third party wishes to submit a report on behalf of a client which is a Reporting Financial Institution (RFI) in its own right, or would otherwise be a Trustee Documented Trust (TDT), the report must **show** the RFI or the TDT **as** the reporting financial institution, and its controlling persons as account holders.
>
> An RFI or a TDT has not complied with its obligations under the CRS Regulations if it has not been shown **as** the reporting financial institution in the report.
>
> Financial institutions or third-party service providers whose CRS reports have been structured incorrectly will be expected to submit correct reports for all affected periods as soon as they identify the issue, unless they have already been contacted by Revenue Jersey about this. [Commission's emphases]

27. The Appellant has commented that the statement that "An RFI or a TDT has not complied with its obligations under the CRS Regulations if it has not been shown as the reporting financial institution in the report" is wrong in law as a TDT has no obligation under the law.

28. The Commission comments that showing as is not the same as being and cannot see how CN1 usefully helps the Respondent's argument. The Commission accepts that in the XML Schema the TDT must be shown under the ReportingFI tag, but both the Respondent and the Appellant accept the Schema is not determinative. Furthermore, CN1 was issued in 2019 and can have no bearing in the Commission's view on the Appeal.

29. The XML report based on the OECD CRS Schema, however, does show the TDT under the ReportingFI tag. The Appellant has commented on this as follows:

> The operation of CRS is heavily based on FATCA and similar files are used for submission. Under FATCA, it was initially acceptable for a trustee to report the reportable accounts of a TDT as if they were accounts of the trustee without providing the name of the trust. As such, under the original requirement, the schema was devised so as to provide details of the account holder rather than the name of the trust.
>
> It was only from 2016 that the requirement to provide the name of the trust was introduced (per section 2.14 of Practical guidance in respect of US FATCA reporting for Jersey institutions Version 5.0; release date 19 January 2021).
>
> Following the change in policy and the introduction in the CRS to require the name of the trust, due to the construction of the XML schema, the only way it could accommodate the name of the trust was to include the details in the Reporting FI section. This seemed to work appropriately, and the schema was never updated to distinguish between a trustee reporting a TDT or a third party reporting its clients.
>
> It is however our view that the reporting mechanism to submit the information cannot override the treatment of a trust in the Regulations and the CRS. The additional requirements to include the name of the trust did not change the status of the TDT in the Regulations. Once the trustee agrees to take on the reporting obligations for the trust, the trust becomes a Non-Reporting FI. This seems to be agreed by the Comptroller of Revenue.

30. The Respondent has commented at the Appeal Hearing that the ReportingFI tag was the only place the name of the trust could be placed. The Commission accepts this as a statement of fact.

31. Furthermore, the name of the trust, whilst useful, is not essential in the fulfilment of the objectives of AEOI. The fact that e.g. a beneficiary (whose full name, DOB, residential address and TIN in the participating jurisdiction being reported to) has received a discretionary payment of £x from a Jersey trust would be sufficient information for that jurisdiction to audit the beneficiary's tax returns. The name of the trust is helpful but not essential, as shown by the fact that it was not required under FATCA. In terms of an audit trail, the trustee would be the first port of call for an enquiry by a participating jurisdiction.

The 'interpretation of the Regulations' argument

32. Both the Respondent and the Appellant have argued that the Regulations are unclear in the case of TDTs and, furthermore, that this is the primary reason for the Appeal. They have then mounted arguments as to whether, when tax law is unclear, the 'benefit of the doubt' should be shown to the tax authority or to the taxpayer and have quoted various cases to support those arguments.

33. The Commission disagrees that the Regulations are unclear and considers no reasons for their unclarity have been advanced other than the Appellant's specious and circular argument that they must be unclear otherwise there would not be an appeal.

34. The term trustee documented trust is not included in Schedule 1 to the Regulations, WORDS AND EXPRESSIONS DEFINED IN THE CRS. This can only be because, under the CRS itself, the due diligence and reporting obligations of a TDT for the purposes of the CRS have been transferred to its corporate trustee as an RFI or, in the event of a failure to fulfil those obligations, revert to or, indeed, remain with the trust if the corporate trustee did not freely accept those obligations, the TDT as an RFI. The Regulations, therefore, only need to address the due diligence and reporting obligations of RFIs with respect to the reportable accounts maintained by the RFI as the corporate trustee of the TDT. For the Regulations there are only RFIs, whether they be the corporate trustee of a TDTs or the trust itself.

35. It is, of course, only a fiction of the CRS that a trust, unlike a company, does anything because a trust is a legal arrangement, and it is inconceivable that a legal arrangement could do anything. The corporate trustee maintains the reportable accounts of the TDT nolens volens as part of its trustee fiduciary duties, which are to the beneficiaries of the trust, unlike, say, a company where the fiduciary duties of the directors are to the company, not its shareholders.

36. If the trustees submit a normal tax return for a TDT then the TDT would pay the trustees as part of its customary remuneration or a third-party service provider for this service and would pay the tax due based on the return. Any penalties which arose for late submission of the return could be, depending upon the circumstances, borne by the trustees personally or by the trust. In the latter case, a wise trustee would obtain an indemnity from the beneficiaries against a breach of trust. In the case of the Regulations, however, any penalty which arises for late submission is the liability of the RFI and not the TDT, a position which is accepted by both the Respondent and the Appellant. If the CRS return was delayed because it was incomplete or inaccurate, which is discussed further below, because of a failure of a beneficiary to provide the necessary information in respect of his reportable account(s), then it would be reasonable for the trust to bear the penalty. There is no necessity to spell this out in the Regulations since it is a commercial matter between the trust and the trustees.

37. The position with a third-party service provider is quite different as the third party is not part of the trust legal arrangements, hence the requirement for Regulation 9, to spell out that the due diligence and reporting obligations "continue to be the obligations of the reporting financial institution"

38. The Commission considers that Regulation 10 is deficient in two respects.

39. Firstly, whilst the Commission has not taken into account how other participating jurisdictions have implemented the CRS in determining the Appeal, nevertheless it has examined their implementation. Regulations 10, 11 and 12 in the light of this this examination appear terse almost to the point of being ineffective. Nevertheless, in the opinion of the Commission they are clear.

40. Secondly, the quantum of the penalty of £300 in Regulation 10 appears derisory and to lack any deterrent effect. The quantum of this penalty can be compared to that in the Cayman

Islands of some £45,000 which would have, in the opinion of the Commission, a significant deterrent effect. Furthermore, the Cayman Islands specifically identity the returns of a bank and a corporate trustee of TDTs for the purposes of applying this penalty.

41. The Commission, in the light of the above, do not consider it appropriate to enter into a consideration of the merits of the arguments of the Respondent and the Appellant in respect of the position of the law when tax legislation is unclear.

The 'proportionality' argument

42. Regulation 8 could be read as saying that the relation between 'return' and 'each reportable account' is one to one. The merit in this reading in respect of proportionality is that it would equate the quantum of the penalty as between, say, a bank and a trust company. Obviously, such a reading would dramatically increase (by a factor of up to six) the penalty being sought by the Respondent from the Appellant and would astronomically increase the penalty for a bank. The Commission noted that this was an abyss into which neither the Respondent nor the Appellant wished to look.

43. The only other reading is that 'each' is to be read distributivity and that in the case of a trust company RFI the reportable accounts of its TDTs become under the TDT regime the reportable accounts of the RFI which then submits a return in relation to each of those accounts.

44. The distributive reading is enforced by the wording in Regulation 5 which talks about "the review, identification and reporting of **all** the reportable accounts which it maintains", these being the accounts which are reported in the return. [Our emphasis]

45. The Appellant argues that to single out trust company RFIs for a 'return per trust' treatment results in disproportionality between e.g. a bank which may have hundreds of thousands of reportable accounts and the Appellant where the number of reportable accounts is somewhere between 456 (there is a minimum of one reportable account per trust investment entity) and a factor depending upon the number of beneficiaries etc. of probably 10 times 456.

46. The Commission takes the view that the focus of the CRS is reportable accounts; reportable accounts are the hard currency of the CRS and their sharp focus attribution to their holders is the rationale of the CRS. The proportionality argument by penalising trust businesses and, effectively, letting banking businesses off the hook, on this measure fails.

The 'separate failure' argument

47. The Respondent referred to HMRC's International Exchange of Information Manual ("IEIM") which contains a section covering the penalties which may be imposed under the CRS. The UK CRS Regulations are very similarly worded in terms of their provision for penalties levied as a result of non-compliance:

> A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

48. IEIM405080 provides as follows:

> The Regulations set out the penalties that will be applicable where a Reporting Financial Institution fails to provide the required information and where it provides inaccurate information. A penalty can be applied for each separate failure by the Financial Institution.

49. The Respondent submits that the calculation of penalties cannot depend on whether or not – or the extent to which – the trustee decides to combine their reporting obligations as this would lead to arbitrary results. Rather a separate, distinct obligation arises in respect of each TDT for whom the trustee is obliged to report. It follows, therefore, that the penalty should be applied in respect of each TDT whose reporting has not been completed within the required timescales as these are separate breaches and "a penalty can be applied for each separate failure by the FI".

50. The more natural reading of the IEIM is that a penalty can be applied for each return that is filed late, in the case of the Appellant each of the three returns filed late are subject to the £300 penalty as representing three separate failures.

51. The Respondent does not mention 'return' in this respect and yet the submission of a return rather than a "separate, distinct obligation arising in respect of each TDT" is the heart of the matter.

52. The trustee RFI is at liberty to decide how to combine their reporting obligations and, if there were multiple corporate trustees within the TCB affiliation, then the trustee RFI could file a return in respect of each corporate trustee or a consolidated report including these returns.

53. Without the each separate failure clarification in the IEIM, the UK regulations would potentially only be able to apply a single £300 penalty. With the each separate failure clarification, each return filed after 30 June can be charged the £300 penalty. To read the clarification as applying a separate £300 penalty to each TDT within a return rather than to the return itself appears to be both a strain upon the wording of the clarification and an unjustified extension of its intention.

54. The Appellant has argued that HMRC's IEIM is irrelevant to the Appeal as, whilst the wording of the UK's and Jersey relevant Regulations are similar the UK's whole approach to the registration of trusts is quite different from Jersey's.

55. The Jersey Guidance Notes at paragraph 1.7 state:

> In interpreting the CRS assistance can also be obtained from the UK HMRC International Exchange of Information Manual and the document prepared by STEP based on the HMRC Manual.

56. But clearly "assistance" is just that, assistance.

Regulation 16(6)

57. The Commission explored the possibility of their substituting an increased penalty from that of £300 under their power in Regulation 16(6).

58. The Respondent argued that such a substitution can only occur where the Comptroller himself has the power to vary the penalty and in the case of Regulation 10 he doesn't have that power and therefore there can be no substitution by the Commissioners.

59. The Commission accepts the argument that it has no power under Regulation 16(6) to substitute a penalty for the £300 fixed penalty.

Regulation 12

60. The Commission explored the possibility of the application of a Regulation 12 penalty to an incomplete return which had been submitted on time.

61. The Commission considered this exploration relevant as the advisers to the Appellant have always maintained with their clients that it was better to file a complete and correct return late rather than an incomplete and possibly inaccurate return on time. With the benefit of hindsight, this advice only made commercial sense if the penalty for filing a late return was limited to £300 per file submitted. In the event the Appellant filed three files late to cover the reportable accounts of all of its TDTs.

62. The Respondent has argued that the conditions A, B and C in Regulation 12 were onerous and had to amount to a deliberate intention to deceive and would not apply to the sort of inaccuracy envisaged in the Commission's enquiry i.e. omissions or data irregularities in the return.

63. The Commission accept the Respondent's arguments that Regulation 12 was not relevant to the Appeal.

Regulation 14 - the penalty notice

64. The penalty notice issued by the Respondent referred to above is acknowledged by the Respondent to be incorrect as it refers to "456 Reporting FIs" and states the Respondent's initial rationale and the notice is not therefore in line with its current position which is the subject of the Appeal. Whether, therefore, it is a valid notice under Regulation 14 is open to doubt.

65. Whether a corrected penalty notice or notices referring to 'trusts' or 'TDTs' rather than RFIs could have been issued at the time the Respondent accepted that the notice was incorrect or would have been by then out of time is also open to doubt.

66. The Appellant's view is that "the Respondent erroneously issued the penalty notices to the '456 Reporting FIs' without making reference to the names of the trusts" and that the person whom the Respondent must notify of the penalty "must be the individual trust".

67. The Respondent "contends that the penalty notice is nevertheless clear as to the sum of the penalty and that it has been imposed for a failure to file a report within the required timeframe and so remains valid as a matter of customary law and finds support by way of Article 14 of the IL."

68. Article 14 of the Interpretation (Jersey) Law 1954 states:

> **14 Deviation in forms**
>
> Where a form is prescribed or specified by an enactment, deviations from that form not materially affecting the substance nor likely to mislead shall not invalidate the form used.

69. No form, however, is prescribed or specified by the Regulations and, therefore, the inaccuracies in the penalty notice cannot reasonably be considered deviations for the purposes of Article 14 and, as a consequence, Article 14, in the Commission's view, is irrelevant.

70. The Commission notes that neither the Respondent nor the Appellant has referred to UK case law to support their view and the Commission is not minded to do so.

71. Customary law has been defined as being the established pattern of behaviour that can be objectively verified within a particular social setting such that a claim can be carried out in defence of what has always been done and accepted by law. Given that the penalties were the first issued in the second year of the Regulations' operation it is difficult if not impossible to see how the notices remain valid as a matter of customary law.

72. However, the Commission considers that the notices do give sufficient notice of the amount and the grounds of the penalty for the Appellant to appeal and therefore, for the purposes of the Appeal, remain valid. The Commission is also conscious that if they were not so, the Respondent's case would fall at the first fence and that all subsequent arguments would become irrelevant.

Mitigation of penalties

73. The Commission enquired as to whether there was any room for mitigation of penalties given that these had been fully mitigated in relation to the CRS for its first year 2016 and for FATCA and UK FATCA up to and including 2016.

74. The Respondent stated that mitigation would not be in point, as there are other trust company RFIs awaiting the outcome of the Appeal, and the Comptroller required certainty from the Commissioners before commencing a review of the penalty regime.

75. The Commission accepted this argument.

DETERMINATION OF THE APPEAL

76. On the basis of their consideration of the arguments and their other considerations set out above it is the determination of the Commission that the Appeal be upheld and that a single penalty of £300 in respect of the return submitted by the Appellant late on 4 July 2018 be charged under Regulation 10 of the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015.